

IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 07-1499

KATHERINE VARNUM, et al.)	
Plaintiffs-Appellees,)	On appeal from the
v.)	Iowa District Court for Polk County
)	Case No. CV5965
TIMOTHY J. BRIEN, in his official)	The Honorable Robert B. Hanson,
capacities as the Polk County Recorder)	presiding
and Polk County Registrar,)	
Defendant-Appellant.)	

PROOF BRIEF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION

AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEES

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* APPLICATION FOR *PRO HAC VICE*
ADMISSION PENDING

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Psychological Association is a nonprofit scientific and professional organization founded in 1892. The APA has more than 148,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country. Among the APA's major purposes is to advance psychology as a means of promoting human welfare by, among other things, "the increase and diffusion of psychological knowledge . . . to advance scientific interests and inquiry and the application of research findings to the promotion of the public welfare." Bylaws, Article 1. To fulfill its mission, the APA has filed more than one hundred amicus curiae briefs in state and federal courts, including in the Supreme Court of the United States. These briefs have been filed in cases addressing such topics as competency to stand trial, child sexual abuse, the insanity defense, the death penalty, mental retardation and matters involving gay and lesbian criminal and civil rights. The APA has a rigorous approval process for amicus briefs that requires an assessment, among other things, of whether there is sufficient scientific research, data and literature to present a strong position and whether the APA can usefully contribute to the court's understanding of the issues before it.

Human sexuality and familial relationships are professional concerns of a substantial number of the APA's members, either as researchers or as clinicians. In July 2004, the APA's Council of Representatives adopted two Resolutions relevant to this case, which are reproduced in the Addendum to this brief. In its Resolution on Sexual Orientation and Marriage, the APA resolved, based on empirical research

concerning sexual orientation and marriage, “That the APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights, and privileges.” And in its Resolution on Sexual Orientation, Parents, and Children, the APA recognized that “There is no scientific evidence that parenting effectiveness is related to parental sexual orientation: lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children.” In both Resolutions the APA resolved to provide scientific and educational resources, such as this brief, to inform public discussion and understanding of these issues. Accordingly, the APA has previously filed amicus briefs in 14 cases in 10 states related to same-sex marriage.

ARGUMENT

I. The Nature of Scientific Evidence and Its Presentation in this Brief.

In the informed judgment of *amicus*, this brief presents an accurate and balanced summary of the current state of scientific and professional knowledge about these issues. The following summarizes the professional standards used in selecting individual studies and literature reviews for citation and for drawing conclusions from research data and theory.

(1) We are ethically bound to be accurate and truthful in describing research findings and in characterizing the current state of scientific knowledge.

(2) We rely on the best empirical research available, focusing on general patterns rather than any single study. Whenever possible, we cite original empirical studies and literature reviews that have been peer-reviewed and published in reputable

academic journals. Not every published paper meets this standard because academic journals differ widely in their publication criteria and the rigor of their peer review. We cite chapters, academic books, and technical reports, which typically are not subject to the same peer-review standards as journal articles, when they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. In assessing the scientific literature, we have been guided solely by criteria of scientific validity, and have neither included studies merely because they support, nor excluded credible studies merely because they contradict, particular conclusions.

(3) Before citing any study, we critically evaluate its methodology, including the reliability and validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses. We also evaluate the adequacy of the study's sample, which must always be considered in terms of the specific research question posed by the study.

(4) Scientific research cannot prove that a particular phenomenon never occurs or that two variables are never related. When repeated studies with different samples consistently fail to establish the existence of a phenomenon or a relationship between two variables, researchers become increasingly convinced that, in fact, the phenomenon does not exist or the variables are unrelated. In the absence of supporting data from prior studies, if a researcher wants to argue that two phenomena are related, the burden of proof is on that researcher to show that the relationship exists.

(5) No empirical study is perfect in its design and execution. All scientific studies can be constructively criticized, and scientists continually try to identify ways to improve and refine their own work and that of their colleagues. When a scientist identifies limitations or qualifications to a study's findings (whether the scientist's own research or that of a colleague), or notes areas in which additional research is needed, this should not necessarily be interpreted as a dismissal or discounting of the research. Rather, critiques are part of the process by which science is advanced.

II. Sexual Orientation and Homosexuality

Amicus respectfully refers the Court to the expert affidavit submitted in the trial court by Dr. Gregory M. Herek, which was ultimately admitted and relied on by the trial court in reaching its decision in favor of the plaintiffs. Dr. Herek's affidavit presents much of the same research regarding sexual orientation and homosexuality that the APA has presented in the 14 other cases in which it has submitted an amicus brief on these issues. This overlap reflects Dr. Herek's expertise and his distinguished role in previously assisting the APA in determining the state of the research.

In the APA's prior efforts to assess the extent of scientific consensus on these issues and to prepare the best brief possible, the APA worked with a group of preeminent scientists whose careers were devoted to relevant research on aspects of sexual orientation. Among those researchers was Dr. Herek, a tenured professor of Psychology at the University of California at Davis, who is well known for his research on stigma based on sexual orientation and the social psychology of heterosexuals' attitudes towards lesbians, gay men and bisexuals. Among many other professional

honors, Dr. Herek is a Fellow of the APA. Dr. Herek played a key role in developing the APA's amicus briefs which were filed over the last three years in 10 states and 14 cases involving the right of same sex couples to marry. In selecting the research to present in those cases, the APA was guided solely by these same criteria described above, not by whether a given study supports or undermines a particular conclusion.

Accordingly, the APA agrees with and adopts the statements set out in Dr Herek's affidavit. In the view of *amicus*, the affidavit sets forth the scientific consensus on these issues, particularly the nature of sexual orientation and homosexuality, and important issues related to stigma. The remainder of this brief presents research on additional related issues to assist the Court.

III. Sexual Orientation and Relationships

A. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Aspects.

Like their heterosexual counterparts, many gay men and lesbians desire to form stable, long-lasting, committed relationships.¹ Substantial numbers are successful in doing so. Empirical studies using nonrepresentative samples of gay men and lesbians show that the vast majority of participants have been involved in a committed

¹ In a 2000 poll with a probability sample of 405 lesbians, gay men, and bisexuals from 15 major U.S. metropolitan areas, 74% responded affirmatively to the question, "If you could get legally married to someone of the same sex, would you like to do that someday or not?" Henry J. Kaiser Family Foundation, *Inside-Out: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001), available at <http://www.kff.org/kaiserpolls/upload/National-Surveys-on-Experiences-of-Lesbians-Gays-and-Bisexuals-and-the-Public-s-Views-Related-to-Sexual-Orientation.pdf>.

relationship at some point in their lives, that large proportions are currently involved in such a relationship (across studies, roughly 40-70% of gay men and 45-80% of lesbians), and that a substantial number of those couples have been together 10 or more years.² Recent surveys based on more representative samples of gay men, lesbians, and bisexuals support these findings and indicate that many same-sex couples are cohabiting.³ An analysis of data from the 2000 US Census reported that same-sex couples headed more than 594,000 households in the United States including nearly 3,700 Iowa households.⁴ More recent Census data indicate that the number of same-sex cohabiting couples in the United States was approximately 775,000 by 2005, with

² See L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships: A Sourcebook* 114 (Hendrick & Hendrick eds., 2000); L.A. Kurdek, *Lesbian and Gay Couples*, in *Lesbian, Gay, and Bisexual Identities over the Lifespan* 243 (A.R. D'Augelli & C.J. Patterson eds., 1995); P.M. Nardi, *Friends, Lovers, and Families: The Impact of AIDS on Gay and Lesbian Relationship in In Changing Times: Gay Men and Lesbians Encounter HIV/AIDS* 55, 71-72 (Tables 3.1 and 3.2) (Martin P. Levine et al. eds., 1997).

³ T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay Ghettos" with Those Living Elsewhere*, 91 *Am. J. Pub. Health*, 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 *J. Consulting & Clinical Psychol.* 53, 56 (Note to Table 1) (2003); Henry J. Kaiser Family Foundation, *Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation*, at 33 (Questions D4, D5) (2001).

⁴ T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, at 4 (U.S. Census Bureau 2003) (Tables 1 and 2), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (last accessed March 23, 2008). These findings are among the best available, although they are not definitive.

approximately 5,800 same-sex couples residing in Iowa, an increase of 58% in Iowa's number of reported same-sex co-habiting couples between 2000 and 2005.⁵

Empirical research demonstrates that the psychological and social aspects of these committed relationships between same-sex partners closely resemble those of heterosexual partnerships. Like heterosexual couples, same-sex couples form deep emotional attachments and commitments. Heterosexual and same-sex couples alike face similar challenges concerning issues such as intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those challenges.⁶ Empirical research examining the quality of intimate relationships also shows that gay and lesbian couples do not differ from heterosexual couples in their satisfaction with the relationship.⁷ As one review of the literature on gay and lesbian couples observed,

⁵ G.J. Gates, *Same-sex couples and the gay, lesbian, and bisexual population: new estimates from the American Community Survey* (2006), available at <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf> (last accessed March 23, 2008).

⁶ L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 *J. Marriage & Fam.* 880 (2004); L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 *J. Fam. Issues* 727 (2001); R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 *Sex Roles* 201 (2000); see generally L.A. Kurdek, *What do we know about gay and lesbian couples?* 14 *Current Directions in Psychological Science* 251-254 (2005); L.A. Peplau & A.W. Fingerhut, *The close relationships of lesbians and gay men*. 58 *Ann. Review of Psych.* 405-24 (2007); L.A. Peplau & L.R. Spalding, *supra* note 2, 114.

⁷ Peplau & Spalding, *supra* note 2, at 114 (“Empirical research has found striking similarities in the reports of love and satisfaction among contemporary lesbian, gay and heterosexual couples.”); see also R.A. Mackey, *supra* note 6; L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men*, in *Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

“most lesbians and gay men want intimate relationships and are successful in creating them. Homosexual partnerships appear no more vulnerable to problems and dissatisfactions than their heterosexual counterparts.”⁸

Based on the empirical research findings, the American Psychological Association has concluded that “[p]sychological research on relationships and couples provides no evidence to justify discrimination against same-sex couples.”⁹

B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples.

Social scientists have long understood that marriage as a social institution has a profound effect on the lives of the individuals who inhabit it. In the nineteenth century, for example, the sociologist Emile Durkheim observed that marriage helps to protect the individual from “anomie,” or social disruption and the breakdowns of norms.¹⁰ Expanding on this notion, twentieth-century sociologists characterized marriage as “a social arrangement that creates for the individual the sort of order in which he can

⁸ L.A. Peplau, *Lesbian and Gay Relationships, in Homosexuality: Implications for Public Policy* 195 (J.C. Gonsiorek & J.D. Weinrich eds., 1991). The authors of a major study of heterosexual and gay couples in the United States undertaken in the early 1980s similarly observed that “[c]ouplehood, either as a reality or an aspiration, is as strong among gay people as it is among heterosexuals.” P. Blumstein & P. Schwartz, *American Couples: Money, Work, Sex* 45 (1983). Present day research reaches the same conclusion. L.A. Kurdek, *Gay and Lesbian Cohabiting Couples*, *supra* note 6 (finding no differences between gay and lesbian couples and heterosexual couples without children on individual personality differences, views on relationships, conflict resolution, and satisfaction); L.A. Kurdek, *Differences*, *supra* note 6 (same).

⁹ Am. Psychol. Ass’n, *Resolution on Sexual Orientation and Marriage* (2004) (reproduced in Appendix to this brief).

¹⁰ E. Durkheim, *Suicide: A Study in Sociology* 259 (J.A. Spaulding & G. Simpson trans., Glencoe, Ill.: Free Press 1951) (original work published 1897).

experience his life as making sense”¹¹ and suggested that “in our society the role that most frequently provides a strong positive sense of identity, self-worth, and mastery is marriage.”¹² Although it is difficult to quantify how the meaning of life changes for individuals once they are married, empirical research demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.¹³ As a legal institution, marriage also gives legally wed spouses access to a host of economic and social benefits and obligations that currently are not extended to same-sex relationships. A review of the legal aspects of marriage is beyond the scope of *amicus*’s expertise. Relevant to the expertise of *amicus*, however, is research establishing that both tangible and intangible elements of the marital relationship have important implications for the psychological and physical health of married individuals and for the relationship itself. Because they are denied the opportunity to marry, partners in same-sex couples are denied these benefits.

Because marriage rights have been granted to same-sex couples only recently and only in one state (Massachusetts) and a few countries, no empirical studies have yet

¹¹ P. Berger & H. Kellner, *Marriage and the Construction of Reality: An Exercise In the Microsociology of Knowledge*, 46 *Diogenes* 1 (1964).

¹² W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 *J. Fam. Issues* 4, 16 (1990).

¹³ See S. Stack & J.R. Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 *J. Marriage & Fam.* 527 (1998); R.P.D. Burton, *Global Integrative Meaning as a Mediating Factor In the Relationship Between Social Roles and Psychological Distress*, 39 *J. Health & Soc. Behav.* 201 (1998); S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 *J. Fam. Issues* 53, 53 (1995); Gove et al., *supra* note 12, at 5.

been published that systematically compare married same-sex couples to unmarried same-sex couples. However, a large body of scientific research has compared married and unmarried *heterosexual* couples and individuals. Based on their scientific and clinical expertise, *amicus* believes it is appropriate to extrapolate from the empirical research literature for heterosexual couples — with qualifications as necessary — to anticipate the likely effects marriage would have on that segment of the sexual minority population that would choose to marry if allowed to do so.¹⁴ *Amicus* believes that the potential benefits of marriage for gay men and lesbians in same-sex couples are similar to those that have been documented for heterosexuals.

Married men and women generally experience better physical and mental health than their unmarried counterparts.¹⁵ These health benefits do not appear to result

¹⁴ Researchers recognize that comparisons between married and unmarried individuals in heterosexual couples are complicated by the possibility that observed differences might be due to self-selection. People who choose to marry may differ in important ways from those who do not choose to marry (e.g., in terms of mental health or happiness). After extensive study, however, researchers have concluded that the benefits associated with marriage result largely from the institution itself rather than from self-selection. *See, e.g.,* Gove et al., *supra* note 12 at 10; J.E. Murray, *Marital Protection and Marital Selection: Evidence from a Historical-Pro prospective Sample of American Men*, 37 *Demography* 511 (2000). Similarly, in anticipating that being able to marry will have beneficial effects for same-sex couples, *amicus* recognizes that self-selection will play a role in marriage between same-sex partners as it currently does with different-sex partners. It is reasonable to expect that same-sex couples who choose to marry, like their heterosexual counterparts, will benefit from the institution of marriage itself.

¹⁵ *See* N.J. Johnson et al., *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 *Annals Epidemiology* 224 (2000); C.E. Ross et al., *The Impact of the Family on Health: The Decade in Review*, 52 *J. Marriage & Fam.* 1059 (1990); R.W. Simon, *Revisiting the Relationships Among Gender, Marital Status, and Mental Health*, 107 *Am. J. Soc.* 1065 (2002).

simply from being in an intimate relationship because most (although not all) studies have found that married individuals generally manifest greater well-being than comparable individuals in heterosexual unmarried cohabiting couples.¹⁶ The health benefits of marriage may be due partly to married couples enjoying greater economic and financial security than unmarried individuals.¹⁷ Of course, marital status alone does not guarantee greater health or happiness. People who are unhappy with their marriage often manifest lower levels of well-being than their unmarried counterparts, and experiencing marital discord and dissatisfaction is often associated with negative health effects.¹⁸ Nevertheless, married couples who are satisfied with their relationships consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

¹⁶ See *supra* note 13; see also S.L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitators Versus Marrieds*, 41 J. Health & Soc. Behav. 241 (2000). But see, e.g., C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995) (failing to detect significant differences in depression between married heterosexuals and comparable unmarried, cohabiting heterosexual couples).

¹⁷ See, e.g., C.E. Ross et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage Fam. 1059 (1990); Stack & Eshleman, *supra* note 13; Brown, *supra* note 16; see also L.I. Pearlin et al., *The Stress Process*, 22 J. Health & Soc. Behav. 337 (1981) (finding that economic strains increase an individual's experienced stress and thereby place her or him at greater risk for psychological problems).

¹⁸ See W.R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well-Being of the Individual?*, 24 J. Health & Soc. Behav. 122 (1983); K. Williams, *Has the Future of Marriage Arrived? A Contemporary Examination of Gender, Marriage, and Psychological Well-Being*, 44 J. Health Soc. Behav. 470 (2003); J.K. Kiecolt-Glaser & T.L. Newton, *Marriage and Health: His and Hers*, 127 Psychol. Bull. 472 (2001).

The health benefits of legal marriage are dramatically evident on the occasion of stressful traumatic events, such as the serious illness, physical incapacitation, or death of a partner. The stress of such situations can be somewhat mitigated by legal benefits associated with marriage such as access to her or his incapacitated partner, the ability to make health decisions for her or him, and the legal recognition of the couple's relationship insofar as it accords the surviving spouse automatic rights of inheritance, death benefits, and bereavement leave. By contrast, an unmarried member of a couple may be denied a right as basic as access to her or his partner in a hospital emergency room or intensive care unit, where only "immediate family" members are allowed. Similarly, the unmarried partner of a decedent may not be legally recognized as having any relation to her or his partner and thus can experience "disenfranchised grief," i.e., "the grief that persons experience when they incur a loss that is not or cannot be openly acknowledged, publicly mourned, or socially supported."

Open communication with one's partner during stressful life events represents a critically important coping mechanism for the individual and the couple. More generally, self-disclosure within a relationship is recognized by researchers and clinicians as a cornerstone of intimacy, and factors that prevent open communication between partners are likely to have a negative effect on the quality and survival of the relationship. The law recognizes the central importance of open communication for married couples through, for example, marital privileges against being compelled to testify. Unmarried couples, however, do not enjoy this same protection. Thus, at the very times when it is most critical for their relationship and individual well-being to

freely communicate with each other, that is, when serious problems arise that could have legal consequences, unmarried partners may be unable to do so.

Being married also is a source of stability and commitment for the relationship between spouses. Social scientists have long recognized that marital commitment is a function not only of attractive forces (i.e., features of the partner or the relationship that are rewarding) but also of external forces that serve as barriers or constraints on dissolving the relationship. Barriers to terminating a marriage include feelings of obligation to one's spouse, children, and other family members; moral and religious values about divorce; legal restrictions; financial concerns; and the expected disapproval of friends and the community.¹⁹ In the absence of adequate rewards, the existence of barriers alone is not sufficient to sustain a marriage in the long term. Not surprisingly, perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.²⁰ Nonetheless, the presence of barriers may increase partners' motivation to seek solutions for problems when possible, rather than rushing to dissolve a relationship that might have been salvaged. Indeed, the perceived presence of barriers

¹⁹ See G. Levinger, *Marital Cohesiveness and Dissolution: An Integrative Review*, 27 *J. Marriage & Fam.* 19 (1965); J.M. Adams & W.H. Jones, *The Conceptualization of Marital Commitment: An Integrative Analysis*, 72 *J. Personality & Soc. Psychol.* 1177 (1997).

²⁰ See, e.g., D. Previti & P.R. Amato, *Why Stay Married? Rewards, Barriers, and Marital Stability*, 65 *J. Marriage & Fam.* 561 (2003).

is negatively correlated with divorce, suggesting that barriers contribute to staying together for at least some couples in some circumstances.²¹

Same-sex relationships are held together by many of the same *attracting* forces as heterosexual couples; but marriage also provides heterosexual couples with institutionalized *barriers* to relationship dissolution that same-sex couples do not enjoy.²² Lacking access to legal marriage, the primary motivation for same-sex couples to remain together derives mainly from the rewards associated with the relationship rather than from formal barriers to separation. Given this fact, plus the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.

IV. The Children of Lesbians and Gay Men

A. Many Same-Sex Couples Are Currently Raising Children.

A large and ever increasing number of gay and lesbian couples, like their heterosexual counterparts, raise children together. Although data are not available to indicate the exact number of lesbian and gay parents in the United States, the 2000 Census found that, among heads of household who reported cohabiting with a same-sex

²¹ See T.B. Heaton & S.L. Albrecht, *Stable Unhappy Marriages*, 53 J. Marriage & Fam. 747 (1991); L.K. White & A. Booth, *Divorce Over the Life Course: The Role of Marital Happiness*, 12 J. Fam. Issues 5 (1991).

²² One study that directly compared same-sex cohabiting couples with heterosexual married couples on this factor found that the gay male and lesbian couples experienced significantly fewer institutional barriers to ending their relationship compared to the heterosexual couples. L.A. Kurdek, *Relationship Outcomes and Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Cohabiting Couples*, 60 J. Marriage & Fam. 553 (1998).

partner, 33% of women and 22% of men had a son or daughter under 18 years living in their home.²³ These percentages correspond to approximately 65,600 gay fathers and 96,000 lesbian mothers who are heads of household, have at least one child under 18 living with them, and are cohabiting with a partner. With regard to Iowa specifically, the same Census data found that among the 3,700 Iowa household heads who reported cohabiting with a same-sex partner, 34% of women and 25% of men had a son or daughter under 18 living in their home. If one includes sexual minority parents not captured in the Census data, researchers estimate that considerably more -- perhaps millions of American parents -- today identify themselves as gay, lesbian, or bisexual.²⁴

Families comprising same-sex couples and their children have diverse origins and take a variety of forms. Whether the children were conceived in one partner's prior heterosexual relationship, through donor insemination, with the assistance of a surrogate mother, or were adopted, both members of the same-sex couple typically function as parents for the children, even if they are not legally recognized as such.²⁵

²³ Simmons & O'Connell, *supra* note 4 at Table 4. As noted *supra* note 4, these are the best estimates currently available but must be interpreted with caution.

²⁴ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the Modern World: Biosocial Perspectives* 238 (G. Bentley & N. Mascie-Taylor eds., 2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002).

²⁵ C.J. Patterson, *Families of the Lesbian Baby Boom: Parents' Division of Labor and Children's Adjustment*, 31 *Developmental Psychol.* 115 (1995); R.W. Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with*

B. There Is No Scientific Basis for Concluding That Gay and Lesbian Parents Are Any Less Fit or Capable Than Heterosexual Parents, or That Their Children Are Any Less Psychologically Healthy and Well Adjusted.

Although it is sometimes asserted in policy debates that heterosexual couples are inherently better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children raised by heterosexual parents, those assertions find no support in the scientific research literature.²⁶

Children's Adjustment, 12 J. Fam. Psychol. 402 (1998); C.J. Patterson et al., *Division of Labor Among Lesbian and Heterosexual Parenting Couples: Correlates of Specialized Versus Shared Patterns*, 11 J. Adult Dev. 179 (2004).

²⁶ Dr. Michael E. Lamb provided expert testimony on issues regarding children in the lower court. Lamb Affidavit, ¶¶ 10-48. Dr. Lamb is a recognized authority in this field, and his works are cited herein and in prior APA briefs.

The research literature on gay, lesbian, and bisexual parents includes more than two dozen empirical studies. These studies vary in the quality of their samples, research design, measurement methods, and data analysis techniques. However, they are impressively consistent in their failure to identify deficits in the parenting abilities or in the development of children raised in a lesbian or gay household. In summarizing the findings from these studies, the psychologist *amicus* refers to several reviews of the empirical literature published in respected, peer-reviewed journals and academic books. These include J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159 (2001); Perrin & Committee, *supra* note 24; C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 Scand. J. Psychol. 335 (2002); J. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children*, 118 Pediatrics 349, 358-60 (2006), and recent empirical studies, e.g., J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 Child Dev. 1886, 1895 (2004). As a recent article summarizes, "empirical research to date has consistently failed to find linkages between children's well-being and the sexual orientation of their parents." G.M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, 61 Am. Psychol. 607, 614 (2006).

When comparing the outcomes of different forms of parenting, it is critically important to make appropriate comparisons. For example, differences resulting from the *number* of parents in a household cannot be attributed to the parents' *gender* or *sexual orientation*. Research in households with heterosexual parents generally indicates that – all else being equal – children do better with two parenting figures rather than just one.²⁷ The specific research studies typically cited in this regard do not address parents' sexual orientation, however, and therefore do not permit any conclusions to be drawn about the consequences of having heterosexual versus nonheterosexual parents, or two parents who are of the same versus different genders.²⁸

Indeed, the scientific research that has directly compared outcomes for children with gay and lesbian parents with outcomes for children with heterosexual parents has been remarkably consistent in showing that lesbian and gay parents are every bit as fit and capable as heterosexual parents, and their children are as psychologically healthy and well-adjusted as children reared by heterosexual parents. Empirical research over the past two decades has failed to find any meaningful differences in the parenting ability of lesbian and gay parents compared to heterosexual parents. Most research on

²⁷ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

²⁸ In their review of 21 published empirical studies in this area, Stacey and Biblarz criticize the practice of “extrapolat[ing] (inappropriately) from research on single mother families to portray children of lesbians as more vulnerable to everything from delinquency, substance abuse, violence, and crime, to teen pregnancy, school dropout, suicide, and even poverty,” and note that “the extrapolation is ‘inappropriate’ because lesbigay-parent families have never been a comparison group in the family structure literature on which these authors rely.” Stacey & Biblarz, *supra* note 26, at 162 & n.2.

this topic has focused on lesbian mothers and refutes the stereotype that lesbian parents are not as child-oriented or maternal as non-lesbian mothers. Researchers have concluded that heterosexual and lesbian mothers do not differ in their parenting ability.²⁹ Relatively few studies have directly examined gay fathers, but those that exist find that gay men are similarly fit and able parents, as compared to heterosexual men.³⁰

²⁹ See, e.g., E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* 105, 115-16 (2002); C.A. Parks, *Lesbian Parenthood: A Review of the Literature*, 68 *Am. J. Orthopsychiatry* 376 (1998); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003). Some studies have found that a child with two lesbian parents may enjoy some advantages over a child raised by a biological mother and a stepfather. See Stacey & Biblarz, *supra* note 26 at 174. However, because such patterns have been observed in only a few studies amicus notes that such conclusions must be regarded as extremely tentative.

³⁰ Perrin & Committee, *supra* note 24 at 342 (finding “no differences” between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or “dealing with general problems of parenting,” and finding that “[g]ay fathers have substantial evidence of nurturance and investment in their parental role”); C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004) (reviewing published empirical studies and concluding that, although additional research is needed, “[o]n the basis of existing research, we can conclude that there is no reason for concern about the development of children living in the custody of gay fathers; on the contrary, there is every reason to believe that gay fathers are as likely as heterosexual fathers to provide home environments in which children grow and flourish”); see also S. Erich et al., *Gay and lesbian adoptive families: An exploratory study of family functioning, adoptive child’s behavior, and familial support networks*, 9 *J. of Family Social Work* 17-32 (2005) (examining gay and lesbian adoptive parents and their children, and finding that levels of family functioning were in the “average” or “strength” ranges on a standardized measure, and did not differ significantly between lesbian mothers and gay male fathers). In a separate study by the same research team, family functioning scores in these gay- and lesbian-parent families did not differ significantly from those of a comparison group of heterosexual adoptive parents, S. Erich, et al., *A comparative analysis of adoptive family functioning with gay, lesbian, and heterosexual parents and their children*, 1 *J. of GLBT Family Studies* 43-60 (2005).

Turning to the children of gay parents, researchers reviewing the scientific literature conclude that studies “provide no evidence that psychological adjustment among lesbians, gay men, their children, or other family members is impaired in any significant way”³¹ and that “every relevant study to date shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment.”³² A comprehensive survey of peer-reviewed scientific studies in this area reported no differences between children raised by lesbians and those raised by heterosexuals with respect to crucial factors of self-esteem, anxiety, depression, behavioral problems, performance in social arenas (sports, school and friendships), use of psychological counseling, mothers’ and teachers’ reports of children’s hyperactivity, unsociability, emotional difficulty, or conduct difficulty.³³

Nor does empirical research support the misconception that having a homosexual parent has a deleterious effect on children’s *gender identity* development.³⁴ Studies concerning the children of lesbian mothers have not found any difference from those of heterosexual parents in their patterns of gender identity. As a panel of the American Academy of Pediatrics concluded on the basis of their examination of peer-

³¹ Patterson, *Family Relationships*, *supra* note 26, at 1064.

³² Stacey & Biblarz, *supra* note 26 at 176.

³³ *Id.* at 169, 171. For additional reviews of the research literature, *see* Patterson, *Family Relationships*, *supra* note 26 at 1058-63; Perrin & Committee, *supra* note 24; Perrin, *supra* note 29.

³⁴ *Gender identity* concerns the child’s psychological sense of *being* male or female.

reviewed studies, “[n]one of the more than 300 children studied to date have shown evidence of gender identity confusion, wished to be the other sex, or consistently engaged in cross-gender behavior.”³⁵

Similarly, most published studies have not found reliable differences in *social gender role* conformity (i.e. adherence to cultural norms defining feminine and masculine behavior) between the children of lesbian and heterosexual mothers.³⁶ Data have not been reported on the gender identity development or gender role orientation of the sons and daughters of gay fathers.³⁷

³⁵ Perrin & Committee, *supra* note 24.

³⁶ See Patterson, *Family Relationships*, *supra* note 26 (reviewing published studies). However, one researcher group found daughters of lesbian mothers were significantly less conforming to stereotypical social gender roles in some respects, e.g., daughters of lesbian mothers were more likely than daughters of heterosexual mothers to aspire to non-traditional occupations for women, such as doctor, astronaut, lawyer, or engineer. R. Green et al., *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*. 15 *Archives Sexual Behav.* 167 (1986); see also M. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982). But, to the extent such differences concerning conformity to stereotypical gender roles could be shown to exist (which is not proven), many mental health professionals would consider them healthy in a world in which gender-based discrimination persists. See, e.g., M.E. Lamb, *Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families*, in *Parenting and Child Development in “Nontraditional” Families* 6 (M.E. Lamb ed., 1999).

³⁷ Empirical data on gay fathers are relatively sparse. For a review of the relevant studies, see Patterson, *Gay Fathers*, *supra* note 30. However, the available empirical data do not provide a basis for assuming that gay men are unsuited for parenthood. If gay parents (fathers or mothers) were inherently unfit, even small-scale studies with convenience samples would readily detect it. This has not been the case. Moreover, there is no theoretical reason to expect gay fathers to cause harm to their children: Being raised by a single father does not appear to be inherently more disadvantageous to children’s psychological well-being than being raised by a single mother. D.B.

As noted by Dr. Herek, homosexuality is neither an illness nor a disability, and the mental health professions do not regard a homosexual orientation as harmful, undesirable, or requiring intervention or prevention. Herek Affidavit, ¶ 16-17. Currently, there is no scientific consensus about the specific factors that cause an individual to become heterosexual, homosexual, or bisexual — including possible biological, psychological, or social effects of the parents’ sexual orientation.³⁸ However, the available evidence indicates that the vast majority of lesbian and gay adults were raised by heterosexual parents and the vast majority of children raised by lesbian and gay parents eventually grow up to be heterosexual.³⁹

Amicus emphasizes that the abilities of gay and lesbian persons as parents and the positive outcomes for their children are *not* areas where credible scientific

Downey et al., *Sex of parent and children’s well-being in single-parent households*, 60 J. of Marriage and the Family 878-893 (1998). Homosexuality – male or female – does not constitute a pathology or deficit, Herek Affidavit, ¶ 16-18; and gay men do not pose a threat to children. See Patterson, *Gay Fathers*, *supra* note 30. Thus, although more research is needed, the available data place the burden of empirical proof on those who argue that having a gay father is harmful to children.

³⁸ Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation – heterosexuality, homosexuality, or bisexuality – is determined by any particular factor or factors. The evaluation of *amicus* is that, although some of this research may be promising in facilitating greater understanding of the development of sexual orientation, it does not permit a conclusion based in sound science at the present time as to the cause or causes of sexual orientation, whether homosexual, bisexual, or heterosexual. See generally Am. Psychol. Ass’n, 7 *Encyclopedia of Psychol.* 260 (A.E. Kazdin ed., 2000); 2 *Corsini Encyclopedia of Psychology and Behavioral Science* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001).

³⁹ See Patterson, *Gay Fathers*, *supra* note 30 at 407-09; Patterson, *Family Relationships*, *supra* note 26 at 1059-60.

researchers disagree. Thus, after careful scrutiny of decades of research in this area, the American Psychological Association concluded in its recent Resolution on Sexual Orientation, Parents, and Children: “There is *no* scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children” and that “Research has shown that adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish.”⁴⁰ And the National Association of Social Workers has determined that “The most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies.”⁴¹ Most recently, in adopting an official Position Statement in support of legal recognition of same-sex civil marriage, the American Psychiatric Association observed that “no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within

⁴⁰ Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004) (emphasis added) (reproduced in Appendix to this brief).

⁴¹ Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social World Speaks* 193, 194 (1997).

heterosexual relationships.”⁴² These statements by the leading associations of experts in this area reflect professional consensus that children raised by lesbian or gay parents do not differ in any important respects from those raised by heterosexual parents. No credible empirical research suggests otherwise. It is the quality of parenting that predicts children’s psychological and social adjustment, not the parents’ sexual orientation or gender.

C. The Children of Same-Sex Couples Will Benefit If Their Parents Are Allowed to Marry.

Allowing same-sex couples to legally marry will not have any detrimental effect on children raised in heterosexual households, but it will benefit children being raised by same-sex couples in at least three ways. First, those children will benefit from having a clearly defined legal relationship with both of their *de facto* parents, particularly for those families that lack the means or wherewithal to complete a second-parent adoption. Such legal clarity is especially important during times of crisis, ranging from school and medical emergencies involving the child to the incapacity or death of a parent. The death of a parent is a highly stressful occasion for a child and is likely to have important effects on the child’s well-being.⁴³ In those situations, the stable legal bonds afforded by marriage can provide the child with as much continuity

⁴² Am. Psychiatric Ass’n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005), available at http://www.psych.org/edu/other_res/lib_archives/archives/200502.pdf.

⁴³ See, e.g., P.R. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *Psychol. Bull.* 26 (1991) (reporting that, across studies, children who experienced the death of a parent subsequently manifested significantly lower academic achievement, psychological adjustment, and self-esteem, compared to children in intact two-parent families).

as possible in her or his relationship with the surviving parent, and can minimize the likelihood of conflicting or competing claims by non-parents for the child's custody.

Second, children will benefit from the greater stability and security that is likely to characterize their parents' relationship when it is legally recognized through marriage. Children obviously benefit to the extent that their parents are financially secure, physically and psychologically healthy, and not subjected to high levels of stress. They also benefit to the extent that their parents' relationship is stable and likely to endure.⁴⁴ Thus, the children of same-sex couples can be expected to benefit when their parents have the legal right to marry. *See supra* Section III.B.

Finally, marriage can be expected to benefit the children of gay and lesbian couples by reducing the stigma currently associated with those children's status. This stigma is discussed in detail by Dr. Herek. Herek affidavit, ¶ 27-28.

⁴⁴ *See, e.g.,* G. Downey & J.C. Coyne, *Children of Depressed Parents: An Integrative Review*, 108 *Psychol. Bull.* 50 (1990); M. Smith, *Parental Mental Health: Disruptions To Parenting and Outcomes for Children*. 9 *Child & Fam. Soc. Work* 3 (2004); M. Rutter & D. Quinton, *Parental Psychiatric Disorder: Effects on Children*, 14 *Psychol. Med.* 853 (1984). Some research suggests that a similar pattern holds when the parents are lesbian or gay. *See, e.g.,* C.J. Patterson, *Families of the Lesbian Baby Boom: Maternal Mental Health and Child Adjustment*, 4 *J. Gay & Lesbian Psychotherapy* 91 (2001) (finding that mentally healthy lesbian mothers also described their children as better adjusted); R.W. Chan et al., *Psychological Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998) (reporting that children of both heterosexual and lesbian mothers had fewer behavior problems when parents were experiencing less stress, having fewer interparental conflicts, and feeling greater love for one another).

CONCLUSION

There is no scientific basis for distinguishing between same-sex couples and heterosexual couples with respect to the legal rights, obligations, benefits, and burdens conferred by civil marriage.

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* APPLICATION FOR *PRO HAC VICE*
ADMISSION PENDING

APPENDIX

Resolution on Sexual Orientation and Marriage

Adopted by the APA Council of Representatives, July 2004

Research Summary

Minority Stress in Lesbian, Gay, and Bisexual Individuals

Psychological and psychiatric experts have agreed since 1975 that homosexuality is neither a form of mental illness nor a symptom of mental illness (Conger, 1975). Nonetheless, there is growing recognition that social prejudice, discrimination, and violence against lesbians, gay men, and bisexuals take a cumulative toll on the well-being of these individuals. Researchers (e.g., DiPlacido, 1998; Meyer, 2003) use the term "minority stress" to refer to the negative effects associated with the adverse social conditions experienced by individuals who belong to a stigmatized social group (e.g., the elderly, members of racial and ethnic minority groups, the physically disabled, women, the poor or those on welfare, or individuals who are gay, lesbian, or bisexual).

A recent meta-analysis of population-based epidemiological studies showed that lesbian, gay, and bisexual populations have higher rates of stress-related psychiatric disorders (such as those related to anxiety, mood, and substance use) than do heterosexual populations (Meyer, 2003). These differences are not large but are relatively consistent across studies (e.g., Cochran & Mays, 2000; Cochran, Sullivan, & Mays, 2003; Gilman et al., 2001; Mays & Cochran, 2001). Meyer also provided evidence that within lesbian, gay, and bisexual populations, those who more frequently felt stigmatized or discriminated against because of their sexual orientation, who had to conceal their homosexuality, or who were prevented from affiliating with other lesbian, gay, or bisexual individuals tended to report more frequent mental health concerns. Research also shows that compared to heterosexual individuals and couples, gay and lesbian individuals and couples experience economic disadvantages (e.g., Badgett, 2001). Finally, the violence associated with hate crimes puts lesbians, gay men and bisexual individuals at risk for physical harm to themselves, their families, and their property (D'Augelli, 1998; Herek, Gillis, & Cogan, 1999). Taken together, the evidence clearly supports the position that the social stigma, prejudice, discrimination, and violence associated with not having a heterosexual sexual orientation and the hostile and stressful social environments created thereby adversely affect the psychological, physical, social, and economic well-being of lesbian, gay, and bisexual individuals.

Same-Sex Couples

Research indicates that many gay men and lesbians want and have committed relationships. For example, survey data indicate that between 40% and 60% of gay men and between 45% and 80% of lesbians are currently involved in a romantic relationship (e.g., Bradford, Ryan, & Rothblum, 1994; Falkner & Garber, 2002; Morris, Balsam, & Rothblum, 2002). Further, data from the 2000 United States Census (United States Census Bureau, 2000) indicate that of the 5.5 million couples who were living together but not married, about 1 in 9 (594,391) had partners of the same sex. Although the Census data are almost certainly an underestimate of the actual number of cohabiting same-sex couples, they indicated that a male householder and a male partner headed 301,026 households and that a female householder and a female partner headed 293,365 households.¹

Despite persuasive evidence that gay men and lesbians have committed relationships, three concerns about same-sex couples are often raised. A first concern is that the relationships of gay men and lesbians are dysfunctional and unhappy. To the contrary, studies that have compared partners from same-sex couples to partners from heterosexual couples on standardized measures of relationship

¹The same-sex couples identified in the U.S. Census may include couples in which one or both partners are bisexually identified, rather than gay or lesbian identified.

quality (such as satisfaction and commitment) have found partners from same-sex and heterosexual couples to be equivalent to each other (see reviews by Peplau & Beals, 2004; Peplau & Spalding, 2000).

A second concern is that the relationships of gay men and lesbians are unstable. However, research indicates that, despite the somewhat hostile social climate within which same-sex relationships develop, many lesbians and gay men have formed durable relationships. For example, survey data indicate that between 18% and 28% of gay couples and between 8% and 21 % of lesbian couples have lived together 10 or more years (e.g., Blumstein & Schwartz, 1983; Bryant & Demian, 1994; Falkner & Garber, 2002; Kurdek, 2003). Researchers (e.g., Kurdek, in press) have also speculated that the stability of same-sex couples would be enhanced if partners from same-sex couples enjoyed the same levels of social support and public recognition of their relationships as partners from heterosexual couples do.

A third concern is that the processes that affect the well-being and permanence of the relationships of lesbian and gay persons are different from those that affect the relationships of heterosexual persons. In fact, research has found that the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples (Kurdek, 2001, in press).

Resolution

WHEREAS APA has a long-established policy to deplore "all public and private discrimination against gay men and lesbians" and urges "the repeal of all discriminatory legislation against lesbians and gay men" (Conger, 1975, p. 633);

WHEREAS the APA adopted the Resolution on Legal Benefits for Same-Sex Couples in 1998 (Levant, 1998, pp. 665-666.

WHEREAS Discrimination and prejudice based on sexual orientation detrimentally affects psychological, physical, social, and economic well-being (Badgett, 2001; Cochran, Sullivan, & Mays, 2003; Herek, Gillis, & Cogan, 1999; Meyer; 2003);

WHEREAS "Anthropological research on households, kinship relationships, and families, across cultures and through time, provide[s] no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution" (American Anthropological Association, 2004);

WHEREAS Psychological research on relationships and couples provides no evidence to justify discrimination against same-sex couples (Kurdek, 2001, in press; Peplau & Beals, 2004; Peplau & Spalding, 2000);

WHEREAS The institution of civil marriage confers a social status² and important legal benefits, rights, and privileges³;

² Turner v. Safley, 482 U.S. 78, 95-96 (1987) (summarizing intangible social benefits of marriage in the course of striking down state restrictions on prisoner marriage, "[m]arriages . . . are expressions of emotional support and public commitment. These elements are an important and significant aspect of the marital relationship."); *Maynard v. Hill*, 125 U.S. 190, 211 (1888) (marriage is more than a mere contract, it is "the foundation of the family and of society"); *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003) ("[m]arriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family"); James M. Donovan, *Same-Sex Union Announcements: Whether Newspapers Must Publish Them, and Why Should we Care*, 68 BROOK. L. REV. 721, 746 (2003) ("the intangible benefit of public recognition is arguably the most important benefit of marriage to the couple as a unit"); Gil Kujovich, *An Essay on the Passive Virtue of Baker v. State*, 25 VT. L. REV. 93, 96 (2000) ("historically, marriage has been the only state-sanctioned and socially approved means by which two people commit themselves to each other. It has been the most favored context for forming a family and raising children. From this perspective, creation of a same-sex alternative to marriage amounts

WHEREAS The United States General Accounting Office (2004) has identified over 1,000 federal statutory provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, for example, those concerning taxation, federal loans, and dependent and survivor benefits (e.g., Social Security, military, and veterans);

WHEREAS There are numerous state, local, and private sector laws and other provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, for example, those concerning taxation, health insurance, health care decision-making, property rights, pension and retirement benefits, and inheritance⁴;

WHEREAS Same-sex couples are denied equal access to civil marriage⁵;

WHEREAS Same-sex couples who enter into a civil union are denied equal access to all the benefits, rights, and privileges provided by federal law to married couples (United States General Accounting Office, 2004)⁶;

WHEREAS The benefits, rights, and privileges associated with domestic partnerships are not universally available⁷, are not equal to those associated with marriage⁸, and are rarely portable⁹;

to an exclusion from the preferred and accepted status---an exclusion that could imply the inferiority or unworthiness of the couples who are excluded, even if the alternative confers precisely the same tangible benefits and protections as marriage.”); Greg Johnson, Vermont Civil Unions: The New Language of Marriage, 25 Vt. L. Rev. 15, 17 (2000) (reflecting on the inferior status of civil unions as compared to marriage).

³ See e.g., *Goodridge v. Dep’t of Public Health*, 798 N.E.2d 941, 955-958 (Mass. 2003) (outlining Massachusetts statutory benefits and rights previously available only to married persons); *Baker v. State*, 744 A.2d 864, 883-84 (Vt. 1999) (outlining Vermont statutory benefits and rights previously available only to married persons); *Baehr v. Lewin*, 852 P.2d 44, 59 (Haw. 1993) (summarizing some of the state law benefits available only to married persons in Hawaii).

⁴ See Note 3.

⁵ WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* 134-35 (1999) (describing the continuing exclusion of gays and lesbians from civil marriage).

⁶ William N. Eskridge, Jr., *Equality Practice: Liberal Reflections on the Jurisprudence of Civil Unions*, 64 ALB. L. REV. 853, 861-62 (2001) (describing the “unequal benefits and obligations” of civil unions under federal law); Mark Strasser, *Mission Impossible: On Baker, Equal Benefits, and the Imposition of Stigma*, 9 WM. & MARY BILL RTS. J. 1, 22 (2000) (“[S]ame-sex civil union partners still would not be entitled to federal marital benefits . . .”); Recent Legislation, *Act Relating to Civil Unions*, 114 HARV. L. REV. 1421, 1423 (2001) (“Furthermore, the parallel between civil unions and marriage extends only to those aspects of each that do not implicate federal law. As the ‘Construction’ section of ARCU [the Act Relating to Civil Union] acknowledges, [m]any of the laws of [Vermont] are intertwined with federal law, and the general assembly recognizes that it does not have the jurisdiction to control federal laws or the benefits, protections and responsibilities related to them.”).

⁷ Gary D. Allison, *Sanctioning Sodomy: The Supreme Court Liberates Gay Sex and Limits State Power To Vindicate the Moral Sentiments of the People*, 39 TULSA L. REV. 95, 137 (2003) (“Currently, eight states have domestic partnership laws in place. By the late 1990s, 421 cities and states, and over 3,500 businesses or institutions of higher education offered some form of domestic partner benefit.”) (citations and internal quotations omitted).

⁸ Eileen Shin, *Same-Sex Unions and Domestic Partnership*, 4 GEO. J. GENDER & L. 261, 272-78 (2002) (describing the limited reach of various domestic partnership laws); Mark Strasser, *Some Observations about DOMA, Marriages, Civil Unions, and Domestic Partnerships*, 30 CAP. U. L. REV. 363, 381 (2002) (noting that while domestic partnerships “provide particular financial benefits” and offer “a vehicle whereby individuals can express that they have a particular kind of relationship with someone else,” they “are neither the equivalent of civil unions nor the equivalent of marriage”).

⁹ Nancy J. Knauer, *The September 11 Attacks and Surviving Same-Sex Partners: Defining Family Through Tragedy*, 75 TEMP. L. REV. 31, 93 (2002) (“The two major drawbacks of domestic partnership are that it tends to grant relatively few rights and it is almost never portable.”).

WHEREAS people who also experience discrimination based on age, race, ethnicity, disability, gender and gender identity, religion, and socioeconomic status may especially benefit from access to marriage for same-sex couples (Division 44/Committee on Lesbian, Gay, and Bisexual Concerns Joint Task Force on Guidelines for Psychotherapy with Lesbian, Gay, and Bisexual Clients, 2000);

THEREFORE BE IT RESOLVED That the APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights, and privileges;

THEREFORE BE IT FURTHER RESOLVED That APA shall take a leadership role in opposing all discrimination in legal benefits, rights, and privileges against same-sex couples;

THEREFORE BE IT FURTHER RESOLVED That APA encourages psychologists to act to eliminate all discrimination against same-sex couples in their practice, research, education and training ("Ethical Principles," 2002, p. 1063);

THEREFORE BE IT FURTHER RESOLVED That the APA shall provide scientific and educational resources that inform public discussion and public policy development regarding sexual orientation and marriage and that assist its members, divisions, and affiliated state, provincial, and territorial psychological associations.

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Resolution on Sexual Orientation, Parents, and Children

Adopted by the APA Council of Representatives, July 2004

Research Summary

Lesbian and Gay Parents

Many lesbians and gay men are parents. In the 2000 U. S. Census, 33% of female same-sex couple households and 22% of male same-sex couple households reported at least one child under the age of 18 living in the home. Despite the significant presence of at least 163,879 households headed by lesbian or gay parents in U.S. society, three major concerns about lesbian and gay parents are commonly voiced (Falk, 1994; Patterson, Fulcher & Wainright, 2002). These include concerns that lesbians and gay men are mentally ill, that lesbians are less maternal than heterosexual women, and that lesbians' and gay men's relationships with their sexual partners leave little time for their relationships with their children. In general, research has failed to provide a basis for any of these concerns (Patterson, 2000, 2004a; Perrin, 2002; Tasker, 1999; Tasker & Golombok, 1997). First, homosexuality is not a psychological disorder (Conger, 1975). Although exposure to prejudice and discrimination based on sexual orientation may cause acute distress (Mays & Cochran, 2001; Meyer, 2003), there is no reliable evidence that homosexual orientation per se impairs psychological functioning. Second, beliefs that lesbian and gay adults are not fit parents have no empirical foundation (Patterson, 2000, 2004a; Perrin, 2002). Lesbian and heterosexual women have not been found to differ markedly in their approaches to child rearing (Patterson, 2000; Tasker, 1999). Members of gay and lesbian couples with children have been found to divide the work involved in childcare evenly, and to be satisfied with their relationships with their partners (Patterson, 2000, 2004a). The results of some studies suggest that lesbian mothers' and gay fathers' parenting skills may be superior to those of matched heterosexual parents. There is no scientific basis for concluding that lesbian mothers or gay fathers are unfit parents on the basis of their sexual orientation (Armesto, 2002; Patterson, 2000; Tasker & Golombok, 1997). On the contrary, results of research suggest that lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children.

Children of Lesbian and Gay Parents

As the social visibility and legal status of lesbian and gay parents has increased, three major concerns about the influence of lesbian and gay parents on children have been often voiced (Falk, 1994; Patterson, Fulcher & Wainright, 2002). One is that the children of lesbian and gay parents will experience more difficulties in the area of sexual identity than children of heterosexual parents. For instance, one such concern is that children brought up by lesbian mothers or gay fathers will show disturbances in gender identity and/or in gender role behavior. A second category of concerns involves aspects of children's personal development other than sexual identity. For example, some observers have expressed fears that children in the custody of gay or lesbian parents would be more vulnerable to mental breakdown, would exhibit more adjustment difficulties and behavior problems, or would be less psychologically healthy than other children. A third category of concerns is that children of lesbian and gay parents will experience difficulty in social relationships. For example, some observers have expressed concern that children living with lesbian mothers or gay fathers will be stigmatized, teased, or otherwise victimized by peers. Another common fear is that children living with gay or lesbian parents will be more likely to be sexually abused by the parent or by the parent's friends or acquaintances.

Results of social science research have failed to confirm any of these concerns about children of lesbian and gay parents (Patterson, 2000, 2004a; Perrin, 2002; Tasker, 1999). Research suggests that sexual identities (including gender identity, gender-role behavior, and sexual orientation) develop in much the same ways among children of lesbian mothers as they do among children of heterosexual parents (Patterson, 2004a). Studies of other aspects of personal development (including personality, self-concept, and conduct) similarly reveal few differences between children of lesbian mothers and children

of heterosexual parents (Perrin, 2002; Stacey & Biblarz, 2001; Tasker, 1999). However, few data regarding these concerns are available for children of gay fathers (Patterson, 2004b). Evidence also suggests that children of lesbian and gay parents have normal social relationships with peers and adults (Patterson, 2000, 2004a; Perrin, 2002; Stacey & Biblarz, 2001; Tasker, 1999; Tasker & Golombok, 1997). The picture that emerges from research is one of general engagement in social life with peers, parents, family members, and friends. Fears about children of lesbian or gay parents being sexually abused by adults, ostracized by peers, or isolated in single-sex lesbian or gay communities have received no scientific support. Overall, results of research suggest that the development, adjustment, and well-being of children with lesbian and gay parents do not differ markedly from that of children with heterosexual parents.

Resolution

WHEREAS APA supports policy and legislation that promote safe, secure, and nurturing environments for all children (DeLeon, 1993, 1995; Fox, 1991; Levant, 2000);

WHEREAS APA has a long-established policy to deplore "all public and private discrimination against gay men and lesbians" and urges "the repeal of all discriminatory legislation against lesbians and gay men" (Conger, 1975);

WHEREAS the APA adopted the Resolution on Child Custody and Placement in 1976 (Conger, 1977, p. 432)

WHEREAS Discrimination against lesbian and gay parents deprives their children of benefits, rights, and privileges enjoyed by children of heterosexual married couples;

WHEREAS some jurisdictions prohibit gay and lesbian individuals and same-sex couples from adopting children, notwithstanding the great need for adoptive parents (Lofton v. Secretary, 2004);

WHEREAS There is no scientific evidence that parenting effectiveness is related to parental sexual orientation: lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children (Patterson, 2000, 2004; Perrin, 2002; Tasker, 1999);

WHEREAS Research has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish (Patterson, 2004; Perrin, 2002; Stacey & Biblarz, 2001);

THEREFORE BE IT RESOLVED That the APA opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services;

THEREFORE BE IT FURTHER RESOLVED That the APA believes that children reared by a same-sex couple benefit from legal ties to each parent;

THEREFORE BE IT FURTHER RESOLVED That the APA supports the protection of parent-child relationships through the legalization of joint adoptions and second parent adoptions of children being reared by same-sex couples;

THEREFORE BE IT FURTHER RESOLVED That APA shall take a leadership role in opposing all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services;

THEREFORE BE IT FURTHER RESOLVED That APA encourages psychologists to act to eliminate all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services in their practice, research, education and training ("Ethical Principles," 2002, p. 1063);

THEREFORE BE IT FURTHER RESOLVED That the APA shall provide scientific and educational resources that inform public discussion and public policy development regarding discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services and that assist its members, divisions, and affiliated state, provincial, and territorial psychological associations.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document described as Proof Brief of the American Psychological Association as *Amicus Curiae* in Support of Plaintiffs-Appellees was served on the following parties on the 28th day of March, 2008 by First Class U.S. mail postage pre-paid.

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